

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) ZHN, LLC,

Plaintiff,

v.

Case No. CIV-12-1289-M

(1) RANDY MILLER, LLC,  
(2) RANDY L. MILLER,  
(3) LIPPARD AUCTIONEERS, INC.,  
(4) TROY LIPPARD,  
(5) ANGIE LIPPARD;  
(6) BRADY LIPPARD,  
(7) JERRY WHITNEY, and  
(8) UNITED COUNTRY REAL ESTATE,  
INC. d/b/a UNITED COUNTRY  
AUCTION SERVICES AND UNITED  
COUNTRY REAL ESTATE  
SERVICES,

Defendants.

(1) RANDY MILLER, LLC,  
(2) RANDY L. MILLER, and  
(3) LIPPARD AUCTIONEERS, INC.,

Third Party Plaintiffs,

v.

(1) ALEXANDER MAGID  
a/k/a ALEX MAGID,

Third Party Defendant.

**MOTION OF PLAINTIFF FOR CONTINUANCE OF TRIAL DATE**

Plaintiff ZHN, LLC moves the Court for an Order continuing the trial date from March 10, 2015 to March 17, 2015. In support hereof, Plaintiff states:

1. On February 26, 2015, the parties attended a settlement conference before Judge West. That settlement conference was recessed and continued to March 5, 2015.
2. On March 5, 2015, Plaintiff reached a settlement of all claims and counterclaims with Randy L. Miller, individually, and Randy Miller, LLC. The terms of the settlement between Plaintiff and the Millers are subject to formal documentation, which must be promptly completed due to the nature of the settlement.
3. Plaintiff was unable to reach settlement with the United Country/Lippard defendants. Those defendants object to granting of a seven day continuance of the trial date.
4. The ZHN/Miller settlement will affect the number of witnesses and exhibits be presented at trial. In addition, trial preparations will be affected by the Court's ruling on the remaining motions involving the claims and defenses of Plaintiff and the United Country/Lippard defendants.
5. Plaintiff believes that granting of the requested extension of ten days would enable them to complete documentation of the Miller settlement and would enable the parties to revise trial preparations in light of the settlement. In addition, the parties would be assisted in their trial preparations by the court's rulings on the remaining motions involving Plaintiff and the United Country/Lippard defendants. Plaintiff believes a one week continuance would enable the parties to prepare a more time efficient presentation of their respective cases.
6. This Court has entertained the following previous requests for extension of time:

- a. On February 24, 2015, the Parties filed their Joint Motion for Extension of Time [Doc. 322] requesting that this Court extend the deadline for objections and counter-designations of deposition testimony to be used at trial and the deadline for objections to counter-designations of deposition testimony to be used at trial. This Court granted such request. [Doc. 323].
- b. On February 23, 2015, Plaintiff filed its Motion for Extension of Time [Doc. 313] requesting that this Court extend the deadline for the Parties to file their Final Pretrial Report to February 24, 2015. This Court granted such request [Doc. 318].
- c. On February 18, 2015, the Parties filed their Joint Motion for Extension of Time [Doc. 283] requesting that this Court extend the deadline for the Parties to respond to motions filed on February 2, 2015 [Doc. Nos. 253, 254, 256, 257, 258, 261, 262 and 263] to February 26, 2015. This Court granted such request [Doc. Nos. 285, 286].
- d. On February 18, 2015, the Parties filed their Joint Motion for Extension of Time Regarding Jury Instructions [Doc. 281] requesting that this Court extend the deadline for the Parties to submit jury instructions to February 23, 2015. This Court granted such request [Doc. 284].
- e. On February 17, 2015, the Parties filed their Joint Motion for Extension of Time [Doc. 278] requesting that this Court extend the deadline for designations of deposition testimony to be used at trial, motions in limine,

requested voir dire, trial briefs and the Final Pretrial Report to February 23, 2015. On February 18, 2015, this Court granted such request [Doc. 279].

- f. On February 13, 2015, Third Party Defendant Alexander Magid a/k/a Alex Magid filed his Motion to Defer Compliance with the Amended Scheduling Order [Doc. 276]. Such Motion is currently pending before the Court.
- g. On January 22, 2015, Defendants Angie Lippard, Brady Lippard, Troy Lippard, Jerry Whitney, Lippard Auctioneers, Inc., and United Country Real Estate, Inc. d/b/a United Country and Defendants Randy Miller, LLC and Randy L. Miller jointly filed a motion for an extension of time [Doc. 231] of one business day within which to file a response to Plaintiff's Motion for Summary Judgment [Doc. 185]. This Court granted such request [Doc. 232].
- h. On December 16, 2014, Plaintiff ZHN, LLC moved for an extension of time [Doc. 154] to respond to Defendants Randy L. Miller's and Randy Miller, LLC's Motion for Summary Judgment [Doc. 135]. This Court granted such request [Doc. 172].
- i. On December 2, 2014, Defendants Angie Lippard, Brady Lippard, Troy Lippard, Jerry Whitney, Lippard Auctioneers, Inc., and United Country Real Estate, Inc. d/b/a United Country and Defendants Randy Miller, LLC and Randy L. Miller filed their Third Motion for New Scheduling Order and Motion to Strike Trial Date [Doc. 136]. This Court granted such request [Doc. 143].

- j. On June 18, 2014, all parties jointly filed an agreed Second Motion for a New Scheduling Order [Doc. 94]. This Court granted such request [Doc. 96].
  - k. On February 20, 2014, all parties jointly filed an agreed Motion for New Scheduling Order [Doc. 65]. This Court granted such request [Doc. 66].
  - l. On October 4, 2013, Plaintiff ZHN, LLC filed a Motion for Extension of Deadline to Amend/Join Parties [Doc. 27]. This Court granted such request [Doc. 29].
  - m. On February 27, 2015, the parties filed a Joint Motion for Extension of Time regarding certain filings, which was granted by the Court on February 27, 2015 [Doc. 339].
7. The United Country/Lippard defendants have advised they would not object to continuing the trial date to June, but, they do object to a seven day continuance or to any intermediate continuance. Plaintiff objects to continuing the trial to the June docket.
8. Due to the impending trial date, Plaintiff respectfully requests that the Court direct an immediate response be filed and, if feasible, make an expedited ruling on this motion. Plaintiff can be available for a conference regarding this matter on Friday, March 6, either in person or by telephone, should the Court so direct.

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order moving the trial date from March 10 to March 17, 2015.

Submitted by:

/s/ George W. Dahnke

Murray E. Abowitz, OBA No. 00117

George W. Dahnke, OBA No. 02131

Nicolas D. Grimwood, OBA No. 31999

ABOWITZ, TIMBERLAKE & DAHNKE, P.C.

105 North Hudson, Tenth Floor (73102)

Post Office Box 1937

Oklahoma City, OK 73101-1937

Telephone: (405) 236-4645

Facsimile: (405) 239-2843

Email: [mea@abowitzlaw.com](mailto:mea@abowitzlaw.com)

[gwd@abowitzlaw.com](mailto:gwd@abowitzlaw.com)

[ndg@abowitzlaw.com](mailto:ndg@abowitzlaw.com)

[mainmail@abowitzlaw.com](mailto:mainmail@abowitzlaw.com)

*Attorneys for Plaintiff, ZHN, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of March, 2015, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

Randy J. Long                      [randy@nwoklaw.com](mailto:randy@nwoklaw.com)  
Clint A. Claypole                [clint@nwoklaw.com](mailto:clint@nwoklaw.com)

**Attorneys for Defendants, Randy Miller, LLC  
and Randy L. Miller, Individually**

Timothy S. Harmon              [timharmon@holdenlitigation.com](mailto:timharmon@holdenlitigation.com)  
Shawna L. McCalip              [ShawnaMccalip@HoldenLitigation.com](mailto:ShawnaMccalip@HoldenLitigation.com)

**Attorneys for Defendants, Lippard Auctioneers, Inc.  
Troy Lippard, Angie Lippard, Brady Lippard,  
Jerry Whitney and United Country Real Estate, Inc.  
d/b/a United Country**

Murray E. Abowitz               [mea@abowitzlaw.com](mailto:mea@abowitzlaw.com)  
George W. Dahnke               [gwd@abowitzlaw.com](mailto:gwd@abowitzlaw.com)  
Michael N. Brown               [brownlawfirm@gmail.com](mailto:brownlawfirm@gmail.com)

**Attorney for Third Party Defendant, Alexander Magid**

/s/ George W. Dahnke  
George W. Dahnke